

UNITED STATES COURT OF
FILED

APR 31 1899

JAMES H. MCKENNEY,
Clerk

No. 136.

Sup. Ct. of Redington for App.
Supreme Court of the United States.

October Term, 1898.

Filed Apr. 21, 1899.

ADOLPH COHN,
APPELLANT,

v.

ANGELA DIAS (DE DALEY),
APPELLEE.

No. 136.

Appeal from the Supreme Court of the Territory
of Arizona.

SUPPLEMENTAL BRIEF FOR APPELLEE.

JAMES K. REDINGTON,
Attorney for Appellee.

JAMES REILLY,
Of Counsel.

WASHINGTON, D. C.:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1899.

IN THE
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Since the submission of this cause, upon April 5th, 1899, counsel for appellant has transmitted to the clerk a brief in reply to that submitted, upon said hearing, for appellee. If such brief be accepted by the court, we respectfully request that the following may also be taken in reply thereto. What we now submit is filed simply to avoid the inference that we in any way assent to some remarkable statements of fact found in this brief for appellant.

I.

Referring to the fatal legal defects in the preparation and filing of the so-called statement of facts and bill of exceptions, as pointed out in our prior brief, counsel for appellant, in this last brief, says :

"These were matters solely for the trial judge and could be raised in the Supreme Court of the Territory only by motion to strike out as not properly a part of the record. Though the court could, if it saw proper, disregard a document which it held to be *not a part of the record*. No such motion was made and that court did not so hold."

We assert that precisely such a motion *was* made. It is found upon pages 93 and 94 of the transcript, and is here inserted in full :

"Now comes the appellee Angela Dias and moves this honorable court for an order striking out from the transcript filed by appellant in this court in the above-entitled cause the following, to wit :

First. Strike out the alleged state- of facts, pages thirty to one-hundred and thirty-four, both inclusive, of said transcript, on the ground that said alleged statement of facts was not approved, settled, nor signed by the trial judge, nor filed with the clerk of the trial court within the time allowed by statute.

Second. Strike out *of* the appellant's bill of exceptions, pages twenty-three to twenty-nine of said transcript, on the ground that the same does not contain a statement 'with such circumstances' or so much of the evidence as is necessary to explain the same.

Third. Strike out *of* the appellant's assignment of errors on the ground that the appellant did not file the same with the clerk of the court below before he took the transcript of the record from the office of said clerk.

Fourth. Strike out a paper filed with the transcript in this cause in this court on December 25th, 1893, entitled 'Supplement to record,' on the ground that the same is not a part of the record by law, nor made a part thereof by statement of facts or bill of exceptions.

JAMES REILLY,
ALLEN R. ENGLISH,
Atty's for Appellee."

Furthermore, counsel for appellant who signs this last brief containing the above quotation, obtained leave to file and actually filed in the Supreme Court of the Territory an answer to or brief opposing said motion. This answer, or brief, appears, as one of the eccentricities of this case, at pages 95 to 97 of the transcript, and is in part as follows :

"Now comes Adolph Cohn, appellant, and to the motion filed by Angela Dias to strike out from the transcript the statement of facts, the bill of exceptions, assignment of errors, and the supplemental paper filed December 25th, 1893, *and says,*" etc.

In view of the foregoing, upon what authority does counsel assert that no motion to strike out these papers was filed?

II.

Upon page 3 of the brief, counsel asserts: "Appellants are not responsible for this ragged, vacillating record."

Who is? Whose duty but the appellant's was it to perfect his appeal according to law, and to bring the case to this court in compliance with the statute, and in intelligible form? And having failed to do so, who will suggest that this court is required to reverse the decision below in order that he may have another chance?

III.

Counsel argues that the appeal to this court brings up the entire cause for review, "as if an appeal had been taken from the Circuit Court of the United States from a decree in chancery."

This proposition conveniently eliminates entirely the Act of Congress of April 4, 1874 (18 Stat., 27). That act expressly declares the law for all cases reviewed in this court from the highest courts of territories, and, as already shown in our previous brief, this court has repeatedly given said act construction to the contrary of the proposition here advanced. (See pages 16, 17, 19, 20 of prior brief and cases cited.)

Respectfully submitted.

JAMES K. REDINGTON,

Attorney for Appellee.

JAMES REILLY,

Of Counsel.